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BEFORE THE

Federal Communications CommissionFEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

WASHINGTON, D.C. 20554

In the Matter of)
)
Petition for Declaratory) RM-8181
Ruling to Unbundle Correctional)
Institution Payphones)

COMMENTS OF CAPITAL NETWORK SYSTEM, INC.

Pursuant to the Commission's Public Notice of February 9, 1993, ^{1/} Capital Network System, Inc. ("CNS"), by its undersigned attorneys, hereby submits its comments in support of the "Petition for Declaratory Ruling" filed by the Inmate Calling Services Providers Task Force of the American Public Communications Council ("Petitioners").

1. CNS is an interexchange carrier ("IXC") headquartered in Austin, Texas. Founded in 1988, CNS's primary business is the provision of operator-assisted calling services. CNS recently expanded its service offerings to include inmate-only operator services provided to correctional institutions. ^{2/}

2. Under the FCC's current treatment of inmate telephone equipment and services as regulated accounts, competitive providers like CNS often are at a serious competitive

^{1/} Petition for Declaratory Ruling Filed to Unbundle Correctional Institution Payphones, DA 93-137, RM-8181 (released February 9, 1993).

^{2/} CNS does not, however, sell or lease equipment in conjunction with its operator services.

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disadvantage in comparison to local exchange companies ("LECs") because of the ability of LECs to cross-subsidize their competitive inmate service offerings. In contrast to the LECs, CNS, as a newer start-up company serving competitive markets, does not have a captive body of ratepayers from which to cross-subsidize its service offerings. Instead, CNS's rates for its prison-only operator services must reflect the true costs of providing these services.

3. The LECs' current practice of treating certain prison calling services and all inmate telephone equipment as part of their regulated services is not only anticompetitive and harmful to LEC ratepayers who subsidize inmate telephone calls, but also a violation of the Commission's rules. As demonstrated in the Petition, ^{3/} the services provided by LECs to correctional institutions include recording, storage, or retrieval functions, as well as limiting the duration of inmate calls, restricting the telephone numbers that inmates can dial, and recording inmates' phone calls. Because these services are "more than a basic transmission service," the Commission's Computer II decision and its progeny require that these services be classified as enhanced and offered on an unregulated basis. ^{4/}

^{3/} See Petition at 4-8.

^{4/} Amendment of Section 64.702 of the Commission's Rules and Regulations ("Computer II"), 77 F.C.C. 2d 384, 420, 428 (1980), recon., 84 F.C.C. 2d 50 (1981), further recon., 88 F.C.C. 2d 512 (1981), aff'd sub nom. Computer and Communications Industry Ass'n. v. FCC, 693 F.2d 198 (D.C. Cir. 1982), cert. denied, 461 U.S. 938 (1983), aff'd on second further recon., 56 Rad. Reg. 2d (continued...)

4. Indeed, several of these LEC services (or their functional equivalents) have already been classified as enhanced services. In Computer II, the Commission found voice storage, which many LECs now provide to correctional institutions, to be an example of an enhanced service.^{5/} In addition, as stated by Petitioners, some carriers use personal identification numbers ("PINs") to track inmate calls. The use of PINs is analogous to the Centrex Customer Dialed Account Recording Service ("CDAR") feature, which permits Centrex customers to tag calls placed on behalf of their clients with unique account codes.^{6/} Just as the Commission classified CDAR as an enhanced service,^{7/} it should also classify inmate services involving PINs as enhanced services. Other LEC services involving recording, storage or retrieval functions should be treated similarly as unregulated enhanced services.

5. To prevent improper LEC cross-subsidization, telephone equipment, as well as specialized enhanced inmate phone services, must be provided by LECs on an unregulated basis. Prison pay telephones and related equipment should be classified as customer premises equipment ("CPE") rather than as regulated LEC pay

^{4/} (...continued)
(P&F) 301 (1984). See 47 C.F.R. § 64.702(a); North American Telecommunications Ass'n, 101 F.C.C. 2d 349, 358 (1985), recon. denied, 3 FCC Rcd 4385 (1988) ("NATA/Centrex Order").

^{5/} Computer II, 77 F.C.C. 2d at 421.

^{6/} NATA/Centrex Order, 101 F.C.C. 2d at 368.

^{7/} Id.

telephone equipment. As Petitioners correctly have explained, coin operated or pay telephones presently are not classified as CPE because the Commission has characterized them as forming "an integral part of a communications transmission service, i.e., pay telephone service, and as such should remain subject to regulation" ^{8/} However, the Commission has limited the definition of public pay telephone service to services provided to the transient public from public locations such as airports and streets, as well as semi-public locations such as gas stations or restaurants. ^{9/} Under this definition, public telephone service does not include inmate-only locations which are neither public nor semi-public locations. This conclusion is supported by the Commission's treatment of inmate-only telephones under the Telephone Operator Consumer Services Improvement Act of 1990 ("Operator Services Act"). ^{10/} Pursuant to the Operator Services Act, the Commission has expressly excluded inmate-only telephones from regulations applicable to all other types of pay telephone locations because these phones are not installed in locations generally available to the public or to transient users. ^{11/} Thus, the Commission's implementation of the

^{8/} Tonka Tools, Inc. and Southern Merchandise Corporation, 58 RR 2d 903, 910 (1985). See also Computer II, 77 F.C.C. 2d at 398 n. 10, 447.

^{9/} See Tonka, 58 RR 2d 910 n. 31.

^{10/} 47 U.S.C. § 226.

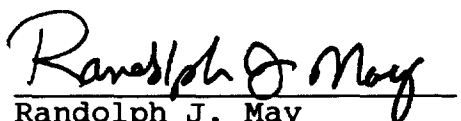
^{11/} Policies and Rules Concerning Operator Service Providers, 6 FCC Rcd 2744, 2752 n.30 (1991), recon. denied in part and granted
(continued...)

Operator Services Act demonstrates that inmate-only telephones are not public payphones. Accordingly, prison pay telephones must be classified as unregulated customer premises equipment.

6. WHEREFORE, the Commission should grant Petitioners' request and issue a declaratory ruling that certain specialized inmate-only services offered by LECs are unregulated enhanced services and that specialized telephones for inmate-only services offered by LECs are unregulated CPE.

Respectfully submitted,

CAPITAL NETWORK SYSTEM, INC.

By: 
Randolph J. May
David A. Gross
Elizabeth C. Buckingham

SUTHERLAND, ASBILL & BRENNAN
1275 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2404
(202) 383-0100

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Its Attorneys

^{11/} (...continued)

in part on other grounds, 7 FCC Rcd 3882 (1992). Indeed, the Commission explained that other pay telephones at correctional facilities that were made available to the public would be subject to the requirements of the Operator Services Act and its implementing regulations. Id.

CERTIFICATE OF SERVICE

I, Joan T. Prouty, hereby certify that a copy of the foregoing Comments of Capital Network System, Inc. has been served by hand this 8th day of March 1993 to the following:

Hon. James H. Quello
Chairman
Federal Communications
Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554

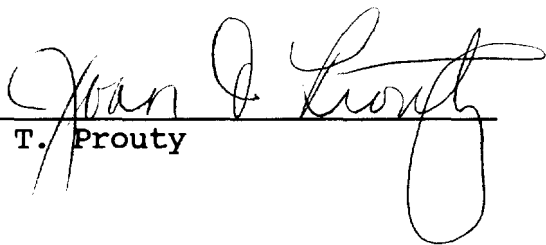
Hon. Sherrie P. Marshall
Commissioner
Federal Communications
Commission
1919 M Street, N.W., Room 826
Washington, D.C. 20554

Cheryl A. Tritt, Esq.
Chief, Common Carrier Bureau
Federal Communications
Commission
1919 M Street, N.W., Room 500
Washington, D.C. 20554

Hon. Ervin S. Duggan
Commissioner
Federal Communications
Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554

Hon. Andrew C. Barrett
Commissioner
Federal Communications
Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554

Albert H. Kramer
Keck, Mahin & Kate
1201 New York Avenue, N.W.
Penthouse
Washington, D.C. 20005



Joan T. Prouty